

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF OKLAHOMA**

TABITHA HAYDEN, as personal representative, of BRIAN HAYDEN,)	
)	
Plaintiff,)	
)	
vs.)	15-CV-133-JHP
)	
UNITED STATES OF AMERICA,)	
Defendant.)	

ANSWER OF THE UNITED STATES OF AMERICA

COMES NOW the Defendant, United States of America, by and through Mark F. Green, United States Attorney for the Eastern District of Oklahoma, and Susan S. Brandon and Michael J. Cooper, Assistant United States Attorneys and submits its Answer to Plaintiff's Complaint. The United States denies all allegations contained in Plaintiff's Complaint, unless expressly admitted herein, and would further show the Court as follows.

1. The United States admits the allegations contained in Paragraph 1 of Plaintiff's Complaint.

2. The United States admits only that Brian Hayden was fatally injured in a car wreck near Soper, Oklahoma. The United States denies the remaining allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. The United States is without sufficient information to admit or deny the allegations contained in Paragraph 3 of Plaintiff's Complaint; therefore, it denies the same and demands strict proof thereof.

4. The United States is without sufficient information to admit or deny the allegations contained in Paragraph 4 of Plaintiff's Complaint; therefore, it denies the same and demands strict proof thereof.

AFFIRMATIVE DEFENSES

For its affirmative defenses, the United States alleges as follows:

1. Plaintiff has failed to state a claim for which relief may be granted.
2. This Court does not have subject matter jurisdiction over the acts alleged in the Complaint.
3. The alleged tortfeasor may not be deemed an employee of the United States at the time of the incident.
4. The injuries or damages, or both, alleged in the Complaint were not proximately caused by a negligent act or omission of any employee of the United States or deemed employee of the United States, pursuant to 25 U.S.C. § 450f(d), acting within the scope and course of employment.
5. The acts and omissions of Plaintiff's decedent caused or contributed to the injuries and damages alleged in the Complaint.
6. Plaintiff's claim for damages is limited to damages recoverable under 28 U.S.C. § 2674 and under 23 Okla. Stat. § 61.2.
7. The United States and its agents, employees, and representatives exercised due care at all times and in all matters alleged in the Complaint, and no act or failure to act by the United States or its personnel was the proximate cause of the alleged damages or loss claimed by Plaintiff.
8. Defendant is not liable for prejudgment interest or punitive damages under 28 U.S.C. § 2674.
9. The United States is entitled to have its liability for Plaintiff's damages, if any, reduced according to the Oklahoma law of comparative fault. 23 Okla. Stat. § 14.

10. Any recovery by Plaintiff is subject to the availability of appropriated funds. 42 U.S.C. § 223(k).

11. The United States is not liable for attorneys' fees except as provided by the Federal Tort Claims Act.

WHEREFORE, having fully answered the allegations of Plaintiff's Complaint, the United States of America prays for the judgment of this Court in favor of the United States and that Plaintiff recover nothing; that Plaintiff's prayer for relief be denied; that the United States be discharged of all liability to the Plaintiff; and that Plaintiff's Complaint be dismissed; and for such further relief as the Court may deem just and proper, including costs.

MARK F. GREEN
UNITED STATES ATTORNEY

/s/ Michael J. Cooper
Susan S. Brandon, OBA #12501
Michael J. Cooper, OBA #22531
ASSISTANT UNITED STATES ATTORNEY
520 Denison Avenue
Muskogee OK 74401
918-684-5113
918-684-5130 - fax
Susan.brandon@usdoj.gov
michael.cooper3@usdoj.gov

CERTIFICATE OF MAILING

I hereby certify that on July 17, 2015, I electronically filed the foregoing with the Clerk of Court using the ECF System. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Rex Travis – rextravis@travislawoffice.com

/s/ Michael J. Cooper